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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,266	04/03/2001	Kim F. Storm	03829P007	7388

7590 09/13/2004

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
7th Floor  
12400 Wilshire Blvd  
Los Angeles, CA 90025

EXAMINER

PATEL, HARESH N

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/826,266

Applicant(s)

STORM, KIM F.

Examiner

Haresh Patel

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-23 are presented for examination.

#### *Election/Restrictions*

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, 19-21, are drawn to “broadcasting a message including frames to several devices with setting hardware / IP addresses to all addresses on a physical subnet by identifying an unused address and iteratively querying addresses”, classified in class 709, subclass 223.
- II. Claims 6-11, 24-29, are drawn to “receiving messages frames and directing them to a specific port of the device, enabling receipt of the frame directed to the specific port on a local port of the device, and disabling receipt on the local port at a specific instance”, classified in class 709, subclass 238.
- III. Claims 12-18, are drawn to “a system having a network element including a direct access module that is disabled at a particular time after power up, use of an external port, use of an internal port where the direct access module is only enabled, and use of an un-configured management node”, classified in class 719, subclass 220.

3. The inventions are distinct, each from the other because of the following reasons: Inventions I, II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as

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broadcasting a message including frames to several devices with setting hardware / IP addresses to all addresses on a physical subnet by identifying an unused address and iteratively querying addresses, lacking one or more of the particulars of inventions II and III. Invention II has separate utility such as receiving messages frames and directing them to a specific port of the device, enabling receipt of the frame directed to the specific port on a local port of the device, and disabling receipt on the local port at a specific instance, lacking one or more of the particulars of inventions I and III. Invention III has separate utility such as a system having a network element including a direct access module that is disabled at a particular time after power up, use of an external port, use of an internal port where the direct access module is only enabled, and use of an un-configured management node, lacking one or more of the particulars of inventions I and II. See MPEP 806.05(d).

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the extensive search required for one group is not required for the other groups, restriction for examination purposes as indicated is proper.

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6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. A telephone call was made to Thomas Coester on August 12, 2004 to request an oral election to the above restriction requirement. Thomas Coester is not available until August 26, 2004.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

9. A shortened statutory period for response to this action is set to expire 0 (zero) months and 30 (thirty) days from the mail date of this letter. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C. 133, MPEP 710.02, 710.02(b)).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is 703-605-5234. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 703-305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Haresh Patel

August 18, 2004



**JOHN FOLLANSBEE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**